IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4299 OF 1995.

Smt. Gulabbai Kataria (teacher)]
Age adult, Occ. Service, R/at]
Vitthal Mistry House, House No.911/1,]
Pokhran Road No.1, Lokmanya Nagar,]
Majiwada, Thane.] .. Petitioner

Versus

Shri Vithal Laxman Mistry,]
Age Adult, Occ. retired, r/o]
911/1, Vithal Mistry House,]
Pokhran Road No.1, Lokmanya Nagar,]
Majiwada, Thane.] .. Respondent

Mr. Rajesh Behere for the petitioner.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 11TH AUGUST, 2005

ORAL JUDGMENT. :

1. The petitioner-tenant has invoked the provisions of Article 227 of the Constitution of India and sought to challenge the impugned orders passed by the Courts below, whereby, the Courts granted the decree

for possession on the ground of arrears of rent.

2. Heard Mr. Rajesh Behere counsel for the petitioner. None appeared for the respondent. Without going any further into the merit of the matter, the Trial Court has, after considering the contention as raised by the tenant in the Written Statement about extension of protection as available under Section 22 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (for short "Slum Act"), observed that there was nothing on the record to show that the suit house was situated in the slum area and, therefore, there is no question of extending the said protection. The Appellate Court has also confirmed this.

3. The counsel for the petitioner has pointed out that an application was moved for bringing material on the record to justify their case, as contended in the Written Statement (Exhibit-68). The same was rejected. However, the ground of protection as available under the Slum Act goes to the root of the matter. The grounds Nos. (c) and (e) raised in the Petition also refer to the same.

4. Considering the submissions as raised and if a

case is made out that the premises in question falls within the ambit of the Notification issued under the Slum Act, there is no question of eviction as sought. If there is a Notification issued under the provisions of a particular Act and if premises falls within the same area and if that particular Notification is to be placed on the record by the parties, the whole complex of the litigation changes so far as the eviction is concerned. There was no question of bringing additional evidence on the record, except the Government Gazette which is issued under the provisions of a particular Act and if it takes note of the premises in question as sought to be contended, there is no reason why such an opportunity should not be given to the petitioner. I am of the view that a case is made out by the petitioner to remand the matter to the Appellate Court. The Appellate Court, after considering the rival contentions and by giving full opportunity to both the parties, to reconsider the case only on the issue of provisions of the Slum Act.

5. In view of the above, the impugned judgment and order dated 16th August, 1995, passed by the IIIrd Additional District Judge, Thane, is set aside. The Appellate Court to decide the Appeal within a period of four months, after due notice to both the parties.

Accordingly, the Writ Petition is allowed on the above terms. There shall be no order as to costs.

. Issuance of certified copy expedited.

[ANOOP V. MOHTA, J.]

[srpasha@hc]